

Remarks

Claims 1–14 and 21-26 remain in the application, claims 15-20 were previously canceled, and claims 1, 8, 21, and 25 have been amended. This transmittal is presented in response to the official office action and is believed to resolve the issues raised by the examiner. Applicant believes the claims as amended to be non-obvious and patentably distinct from all prior art.

OA Item #1: Claims rejection under 35 USC § 112, 1st paragraph – Enablement:

The examiner has rejected claims 1-14 and 21-26 under 35 USC § 112 1st paragraph as being non-enabling. Specifically, the examiner has rejected the limitation of “free flowing edible candy material substance” as being readable on liquids. Accordingly, applicants have deleted the noted limitation from the claims.

Further specifically, the examiner has rejected the limitation of the plug in claim 21 as being “comprised of eraser material” as being new matter. Accordingly, applicants have deleted the noted limitation from claim 21 and applicants have added the limitation of “eraser” in defining the plug of claim 21. Applicant’s respectfully direct the examiner to page 7, 2nd paragraph, first sentence of the specification for support of the “eraser plug” wherein the specification reads, *“It is noted that mounting hole step 58 is provided so as to enable the user to mount holder/plug 50 to a pencil or like object and may be used as an eraser after using holder/plug 50 with assembly 10”*. Inasmuch as the plug is defined as being able to be used as an eraser, applicants urge that the specification defines the plug as an eraser. The examiner has urged that there may be confusion regarding what is being used as an eraser – i.e. the plug 50 or the step 58. Applicants respectfully urge that even a casual reader of the specification, much more so a person having ordinary skill in the art, would readily understand that it is the plug 50 (a tangible object), and not the step 58 (a void in plug 50 as opposed to a tangible object by itself) that erases.

Further specifically, the examiner has urged that in claim 1, line 9, the second instance of “candy article” should read “candy article substance” for consistency. Accordingly, applicants have revised claim 1 to comply with the examiner’s suggestion.

Further specifically, the examiner has raised the question as to what is the distinction between the alternative limitations of claim 2 of a “*discrete substantially spherical candy substance*” and “*a lollipop substance*”. In response, applicants respectfully point out the first limitation precludes non-spherical candy items, whereas the second limitation precludes non-lollipop items.

Given applicants amendments, responses, and explanations, applicants respectfully request that the examiner withdraw the rejection.

OA Item #2: Claims Rejection under 35 USC § 103(a) - Obviousness:

The examiner has rejected claims 1 – 14 under 35 USC § 103(a) based on the part 1 product alert reference as further evidenced by numerous references. In response, applicants have added limitations to all of the independent claims that cause the claims to define over all of the art alone or in combination.

Applicants respectfully point out that none of the prior art disclosed a spill resistant container that was specifically adapted to allow a lollipop to be inserted into a container having a funnel, to coat the lollipop with a particulate candy substance, and remove the coated lollipop from the container via the funnel, all without spilling any of the particulate candy substance contained within the container. Applicants note that while the particulate candy substance is flowable, the flow of the particulate candy substance is substantially different from the flow of liquid paint or liquid bubble solution and that the flow of particulate candy substance is not as free as the flow of a liquid such as water. In particular, the particulate candy substance exhibits the ability to hold some degree of bank (i.e. as in the bank of a hole dug in dirt). Thus when rotating the particulate candy substance, the candy will retain a slope as opposed to a liquid which will seek a horizontal level and the particulate candy substance requires greater space in which to flow efficiently than does water. Furthermore, when inserting a lollipop into a quantity of particulate candy substance, resistance is encountered (as opposed to insertion into water wherein virtually no resistance is encountered) and may even be precluded without rotating or shaking the container while inserting the lollipop. Thus, special features of a container apparatus that provides for instance for a specific ratio of volume of the particulate candy substance as compared to the free volume of the container, or for a gap between a funnel inner end and the candy article of the lollipop so

as to enable the rotating insertion and coating of the lollipop, or the adjustment of the combined length of the lollipop and the holder to allow for proper insertion length, are not found in the cited prior art. Applicants urged that the prior art because the prior art did not address the problems encountered in coating a lollipop in a spill resistance container having a funnel because they did not contemplate a spill resistant container that contained a particulate candy substance with a lollipop. Applicants further urge that the absence of such features lend support to the urging that the claimed invention is nonobvious.

Applicants further specifically and respectfully urge that all of the newly added limitations find support in the specification as originally filed. For instance, the claimed volume ratios and the claimed gap size are readily scalable from the drawings. Also, the claimed combined length finds support in the specification at page 7, 2nd paragraph, 2nd sentence, especially when viewed in light of the drawings.

Given applicants amendments, responses, and explanations, applicants respectfully request that the examiner withdraw the rejection.

OA Item #3: Claims Rejection under 35 USC § 103(a) - Obviousness:

The examiner has rejected claims 1 – 14 under 35 USC § 103(a) based on Price (3,840,678) as further evidenced by numerous references. In response, applicants have added limitations to all of the independent claims that cause the claims to define over all of the art alone or in combination.

Applicants respectfully point out that none of the prior art disclosed a spill resistant container that was specifically adapted to allow a lollipop to be inserted into a container having a funnel, to coat the lollipop with a particulate candy substance, and remove the coated lollipop from the container via the funnel, all without spilling any of the particulate candy substance contained within the container. Applicants note that while the particulate candy substance is flowable, the flow of the particulate candy substance is substantially different from the flow of liquid paint or liquid bubble solution and that the flow of particulate candy substance is not as free as the flow of a liquid such as water. In particular, the particulate candy substance exhibits the ability to hold some degree of bank (i.e. as in the bank of a hole dug in dirt). Thus when rotating the particulate candy substance, the candy will retain a slope as

opposed to a liquid which will seek a horizontal level and the particulate candy substance requires greater space in which to flow efficiently than does water. Furthermore, when inserting a lollipop into a quantity of particulate candy substance, resistance is encountered (as opposed to insertion into water wherein virtually no resistance is encountered) and may even be precluded without rotating or shaking the container while inserting the lollipop. Thus, special features of a container apparatus that provides for instance for a specific ratio of volume of the particulate candy substance as compared to the free volume of the container, or for a gap between a funnel inner end and the candy article of the lollipop so as to enable the rotating insertion and coating of the lollipop, or the adjustment of the combined length of the lollipop and the holder to allow for proper insertion length, are not found in the cited prior art. Applicants urged that the prior art because the prior art did not address the problems encountered in coating a lollipop in a spill resistance container having a funnel because they did not contemplate a spill resistant container that contained a particulate candy substance with a lollipop. Applicants further urge that the absence of such features lend support to the urging that the claimed invention is nonobvious.

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Given applicants amendments, responses, and explanations, applicants respectfully request that the examiner withdraw the rejection.

OA Item #4: Claims Rejection under 35 USC § 103(a) - Obviousness:

The examiner has rejected claims 21 – 26 under 35 USC § 103(a) based on the above cited references in further view of Keeran (1,432,468) and Sanchez (5,951,184). In response, applicants have added limitations to all of the independent claims that cause the claims to define over all of the art alone or in combination.

Applicants respectfully point out that none of the prior art disclosed a spill resistant container that was specifically adapted to allow a lollipop to be inserted into a container having a funnel, to coat the lollipop with a particulate candy substance, and remove the coated lollipop from the container via the funnel, all without spilling any of the particulate candy substance contained within the container. Applicants note that while the particulate candy substance is flowable, the flow of the particulate candy substance is substantially different from the flow of liquid paint or liquid bubble solution and that the flow of particulate candy substance is not as free as the flow of a liquid such as water. In particular, the particulate candy substance exhibits the ability to hold some degree of bank (i.e. as in the bank of a hole dug in dirt). Thus when rotating the particulate candy substance, the candy will retain a slope as opposed to a liquid which will seek a horizontal level and the particulate candy substance requires greater space in which to flow efficiently than does water. Furthermore, when inserting a lollipop into a quantity of particulate candy substance, resistance is encountered (as opposed to insertion into water wherein virtually no resistance is encountered) and may even be precluded without rotating or shaking the container while inserting the lollipop. Thus, special features of a container apparatus that provides for instance for a specific ratio of volume of the particulate candy substance as compared to the free volume of the container, or for a gap between a funnel inner end and the candy article of the lollipop so as to enable the rotating insertion and coating of the lollipop, or the adjustment of the combined length of the lollipop and the holder to allow for proper insertion length, are not found in the cited prior art. Applicants urged that the prior art because the prior art did not address the problems encountered in coating a lollipop in a spill resistance container having a funnel because they did not contemplate a spill resistant container that contained a particulate candy substance with a lollipop. Applicants further urge that the absence of such features lend support to the urging that the claimed invention is nonobvious.

Applicants further specifically and respectfully urge that all of the newly added limitations find support in the specification as originally filed. For instance, the claimed volume ratios and the claimed gap size are readily scalable from the drawings. Also, the claimed combined length finds support in the specification at page 7, 2nd paragraph, 2nd sentence, especially when viewed in light of the drawings.

Conclusion:

Applicant notes that any amendments made by this paper which are not specifically discussed herein are made solely for the purpose of more clearly and particularly pointing out and claiming applicant's invention.

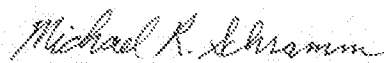
Applicant specifically reserves the right to prosecute claims of broader and differing scope than those presented herein in a continuation application.

Applicant submits that the amendments and the arguments presented herein have placed the claims in condition for allowance. Action in accordance therewith is earnestly solicited.

If the examiner has any questions or comments which may be resolved over the telephone, he is requested to call Michael R. Schramm at 801-710-7793.

DATE: April 6, 2009

Respectfully submitted,

A handwritten signature in cursive script that reads "Michael R. Schramm". The signature is written in dark ink and is positioned above a horizontal line.

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Agent for the Applicants
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